APPENDIX

OPINION OF THE COURT BELOW

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 86, 87—September Term, 1967.

(Argued October 10, 1967 Decided December 27, 1967.)

Docket Nos. 31164, 31245

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

J. P. STEVENS & CO., INC.,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

TEXTILE WORKERS UNION OF AMERICA,

Intervenor.

Before:

LUMBARD, *Chief Judge,*
SMITH and FEINBERG, *Circuit Judges.*

Petitions for review and cross-petition for enforcement of an order of the National Labor Relations Board, 163 NLRB No. 24, requiring the employer, *inter alia*, to cease and desist from various unfair labor practices and to reinstate discharged employees, and dismissing complaints alleging violations in the discharges of certain other employees.

Order modified and, as modified, enforced.

DANIEL B. JORDAN, New York, N. Y., for *petitioner Textile Workers Union.*

WHITEFORD S. BLAKENEY, Charlotte, No. Carolina (Blakeney, Alexander & Machen, Charlotte, No. Carolina, and Paul, Weiss, Rifkind, Wharton & Garrison, New York, N. Y., of counsel), *for petitioner J. P. Stevens & Co.*

JANET KOHN, Attorney, National Labor Relations Board (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate Counsel, Marcel Mallet-Prevost, Assistant General Counsel, and Glen M. Bendixsen, Attorney, National Labor Relations Board, on the brief), *for respondent.*

SMITH, *Circuit Judge:*

This case is before us on two petitions to review and a cross-petition to enforce an order of the National Labor

Relations Board issued on March 6, 1967, 163 NLRB No. 24, against J. P. Stevens & Co., Inc. ("the Company"). For the second time in less than a year, the Board found that the Company had engaged in numerous violations of sections 8(a)(1), (3) and (4) of the National Labor Relations Act, 29 U. S. C. §§158(a)(1), (3) and (4) ("the Act"). In *J. P. Stevens & Co.* v. *N. L. R. B.*, 380 F. 2d 292 (2 Cir. 1967), cert. denied Sup. Ct. No. 684 (December 11, 1967), we enforced with modifications an order of the Board (substantially similar to the one now before us) issued against the Company on March 22, 1966, 157 NLRB 869. The facts of that case are the background of this one.

In the spring of 1963, the Textile Workers Union of America, AFL-CIO ("the Union") undertook a concerted organizing campaign in approximately half of the Company's forty-three textile plants in North and South Carolina. The Company notified its employees of its intention to oppose the Union, and in response to letters from those of its employees who joined the Union, advising it that any interference with the rights of Union adherents would be referred to the Board, it warned that "You will be expected and required to perform your job as fully as anybody else —if you wish to remain in the Company's employment." The Company subsequently posted on various plant bulletin boards the names of Union members who had written, together with copies of the Company's reply. Many of these workers were eventually discharged; others withdrew from the Union, and as they did so their names were crossed off the lists.

We summarized as follows the change in the Company's attitude toward its workers which came about with the commencement of the organizing campaign:

> Prior to the organizing campaign, the plants had been operated in a permissive manner. Once an employee was hired, his tenure was fairly secure; discharges were uncommon. The Company was tolerant, even lenient, in such matters as absences, work breaks, transfers, and rehirings. Formal written reports of employee reprimands, known as Personnel Action Reports or write-ups, were infrequent and occurred only where misconduct was serious or repeated. With the advent of the Union, however, this attitude changed swiftly. Issuance of write-ups, often quickly followed by discharge, became common for Union adherents. Incidents or activities that had previously been overlooked now occasioned speedy and severe disciplinary action.

380 F. 2d at 296. The Board found, in that case, that in the course of its anti-union campaign the Company had discriminatorily discharged seventy-one employees because of their union activity. We found substantial evidence to support the Board's findings.

During the course of the hearing in that case, the Company continued to discharge employees, and further unfair labor practice charges were filed with the Board. Some of these led to amendment of the complaint, and thus have already been adjudicated. Other charges were still under investigation when the hearing closed, and those, together with additional charges alleging further discharges and

other acts of interference, restraint and coercion in the period from the close of the hearing in September, 1964 through May, 1965 are the subject matter of the present case.[1]

The Board found, in the decision and order now before us, that the Company repeatedly violated section 8(a)(1) of the Act by threatening reprisals, promising benefits, engaging in related acts of interference, coercively interrogating employees, creating the impression of out-of-plant surveillance of employees, requiring an employee to go home and take off an "AFL-CIO" T-shirt, attempting to induce an employee to resign, and discriminatorily applying a no-solicitation rule. The Board also concluded that the Company, in violation of sections 8(a)(3) and (4) of the Act, discharged thirteen employees because of their union activities, four additional employees because of their union activties and because they had testified adversely to the Company in the first hearing, and one employee, not a union member, because she too had testified against the Company. The Company was also found to have violated section 8(a)(3) of the Act by discriminating against two employees in the assignment of overtime work. Finally, the Board concluded that the General Counsel had failed to prove that the discharges of six employees were unlawful.[2]

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[1]As in the first case, the charges were initially filed by Industrial Union Development, AFL-CIO.

[2]The trial examiner found that nineteen employees had been unlawfully discharged, and that the General Counsel had failed to prove unlawful discharge as to five. The Board Affirmed as to seven-

We have reviewed the Board's findings and the record with respect to each of the discharges covered in the Board's decision and order, and have found substantial evidence to support the findings. As in the earlier case, the evidence of anti-union action is overwhelming in some instances, and nearer the borderline in others. The Company points to alleged evidence of unsatisfactory work by each of the employees found to have been discriminatorily discharged. Even in those instances where we must acknowledge the existence of two fairly conflicting views of the evidence, we are of course not at liberty to displace the Board's choice between those views. *Universal Camera Corp.* v. *N. L. R. B.*, 340 U. S. 474, 488 (1951).[3] Two discharges with respect to which the Trial Examiner and the Board disagreed as to the Company's motivation are representative of the "close cases." As to one, the Board reversed a finding that the Company had not violated the Act; as to the other, the Board reversed a finding of violation.

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teen of the nineteen found unlawfully discharged, and found in addition that one employee, who the examiner thought had been lawfully discharged, was instead discharged because she had testified against the Company in the first proceeding. The Board made numerous other changes in the examiner's findings, including the correction of the inadvertent omission to find that employee James Hill had unlawfully been denied overtime work.

[3]See *N. L. R. B. v. Interboro Contractors, Inc.*, —— F. 2d ——, slip op. p. ——. We pointed out in the first case, *J. P. Stevens & Co. v. N. L. R. B.*, 380 F. 2d at 296, n. 4, that the standard of review set out by the Fifth Circuit in *N. L. R. B. v. Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433, 438-39 (5 Cir. 1941), was disapproved in *N. L. R. B. v. Walton Mfg. Co.*, 369 U. S. 404 (1962) (*per curiam*). The Company, with parrot-like persistence, again quotes to us the *Tex-O-Kan* standard.

Juanita B. Faulkenberry worked as a weaver in the Company's Republic plant No. 1 for twelve or thirteen years until her discharge on October 23, 1964. She had thirty years of experience as a weaver, including jobs for two or three years at the Republic plants Nos. 2 and 3. Her work record with the Company was a good one until just prior to her discharge. On March 27, 1964, Faulkenberry gave testimony at the first hearing which partly contradicted that of her immediate supervisor, Simean Dawkins.[4] According to Faulkenberry's corroborated testimony in the hearing in this case, several weeks after her 1964 testimony, Arthur Justus, the general overseer of weaving in the plant, began to watch her work closely. During the summer of 1964, her "loom fixer" was replaced by a "learner-fixer" who had never before fixed looms. In September, she was given a very difficult style of cloth to weave which, according to her testimony, made it more difficult to start up about twenty of her looms. At about this time the weaver in charge of Faulkenberry's looms on the preceding shift complained that the job was too difficult, and was transferred to another job and replaced by one Darby, who, according to Faulkenberry's uncontradicted testimony, "would leave the warp in such a mess that it would take me two or three hours to start the looms

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[4]She testified that her loom fixer, alleged to have been discharged in violation of Section 8(a)(3) of the Act, was working very hard on a job that had been left in real bad shape and that although she had on occasion complained to Dawkins about that fixer's slowness, she did not do so "too much." Dawkins testified that he had "many" complaints from her about that fixer. The examiner characterized her contradiction of Dawkins' testimony as relatively innocuous, but the Board disagreed.

up. . . ." Faulkenberry complained to her supervisors about Darby on a number of occasions, and requested a better loom fixer, but no action (other than promises that Darby would be spoken to about the problem) was taken. About a week before her discharge, Faulkenberry received a personnel action report for low production, which was the first warning she had ever received. According to her own testimony, her production "was real low." During her last week on the job, however, she was assigned an experienced loom fixer and her production rose substantially.

On October 23, 1964, the Company introduced a production change which involved doing away with a set of looms on each of the three shifts; accordingly, Faulkenberry was laid off and a weaver from each of the other shifts was assigned to other work. During the week previous to the change, the three employees taken off weaving were the lowest in production on their respective shifts. Justus and Dawkins both testified that other weavers with the same "learner-fixer" had higher production. Justus also testified, however, that a learner-fixer and a difficult style would affect any weaver's production adversely, and Dawkins, on cross-examination, remembered having testified during the 1964 hearings that the fixer had more effect on production than did the weaver.

The Trial Examiner, after noting that "Justus' credited testimony is that he was not aware of the improvement in [Faulkenberry's] production until after her layoff . . .," concluded that "Since Faulkenberry was not associated with the Union, and since her testimony at the first hearing was relatively innocuous, I do not find that the General

Counsel has met the burden of proof which rests upon him and I shall recommend that the complaint be dismissed as to Faulkenberry." The Board rejected the recommendation. It noted, among other things, that "Faulkenberry had seniority over many other weavers," that "Faulkenberry's testimony at the first hearing was damaging to the Respondent's case and contradicted that of her supervisors who were later responsible for her discharge," and that when Faulkenberry came to the personnel office asking for work at a time when the Company was hiring weavers, the Company, "although it knew of the material increase in her production during her last week and of her desire to work, . . . hired weavers with less seniority and experience than Faulkenberry." The Board concluded:

> In these circumstances we find that the [Company's] assigned reasons for Faulkenberry's discharge were pretexts and that the real reason was that she had given testimony under the Act unfavorable to the [Company]. Accordingly, we find that by discharging Juanita Faulkenberry, the [Company] violated Section 8(a)(4) of the Act.

It is clear that the conclusions of the Trial Examiner and of the Board as to the reason for Faulkenberry's discharge were based on different inferences drawn from the same record testimony. We are not assigned the task of drawing our own inferences as to the Company's motivation; so long as we find substantial evidence supporting the Board's conclusion (taking into account whatever in the record fairly detracts from its weight), that conclusion must stand. *Universal Camera Corp.* v. *N. L. R. B., supra.*

The fact that the Trial Examiner reached a conclusion different from that reached by the Board would be more significant had he based his conclusion on a disbelief in Faulkenberry's testimony. See *N. L. R. B.* v. *A. P. W. Products Co.*, 316 F. 2d 899, 903 (2 Cir. 1963). But the examiner credited all of the testimony bearing on Faulkenberry's discharge, and his recommendation was based on what he considered to be the innocuous nature of her testimony at the first hearing. The Board concluded that the Company did not consider her testimony innocuous, and the Board was of course entirely free to determine this question for itself.

William Coker had been employed by the Company as a weaver for twenty-three years when he was dismissed from its Estes plant on May 25, 1965. Coker was active in the Union, and he was listed as a member of its organizing committee on union leaflets distributed at the Estes plant. During the latter part of October, 1964, Coker wrote a lengthy letter to a local newspaper, detailing the merits of the Union, in reply to an anti-union letter which had appeared in the same newspaper. Publication was refused, and the Union then published the letter over Coker's signature and distributed it at the plant gate. Two weeks later, Coker was transferred from the first shift, on which he had always worked, to the second shift. He thus came under the supervision of Shannon McCall, second shift overseer, who told him that the Union didn't care about the workers, but only wanted their money. Shortly thereafter, Coker was written up for reporting early for work on the second shift and talking with other employees, something he had be-

come accustomed to doing. J. C. Blackston, general overseer of weaving at the Estes plant, testified:

> [O]ur gate opens thirty minutes before shift change; any employee is free to come in if they like. . . . Well I noticed one particular day, this particular day I had the report made out, that [Coker] was there just about at three-thirty, and I saw him talking to six different weavers; so up close to change time, I went to him and asked if he'd mind waiting until ten minutes before four to come out in the weave room . . . and he said he would be glad to, and he didn't do it any more, as far as I know.

Coker was written up again on March 26 and March 30, 1965 for not inspecting his cloth properly. On May 13, 1965 he acted as a union observer at a Board election. Two days later he received another writeup for improper inspection, and McCall outlined for him the precise procedure of proper inspecting.

On May 24, 1965, Coker was inspecting looms at the beginning of his shift, and came to loom No. 46, which had a new warp tied on. He looked only at the face of the cloth, and, noticing nothing wrong, initialed it. Coker stated that he did not follow the complete inspection procedure because the loom had a new warp, and he intended to return to it after he finished inspecting his other looms. While Coker was attending to his other looms, McCall came to loom No. 46 and noticed some torn selvage on the loom. Blackston was shown the torn portion of the cloth the next day. After noting Coker's initials on the cloth, and that the torn portion must have been running

at the time Coker initialed it, Blackston concluded that Coker could not have properly inspected the cloth. Coker was discharged that day.[5]

The Trial Examiner, noting that Coker's credited testimony was that the method of inspection he followed on May 24 was the same he had been following ever since he was employed, and that although the end purpose of inspection is to reduce seconds, Coker's seconds were fewer than average during the last two weeks of his employment, concluded:

> I am persuaded that [the Company] emphasized Coker's alleged shortcomings in inspecting when it became apparent during the hearing that it could not plausibly advance his percentage of seconds as the reason for discharge, and that its real reason was his mem-

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[5]The Company's stated reason for discharging Coker was improper inspection. Coker, however, testified: "He said, we've been talking to you about seconds once before . . . we don't need you any more; and I said, well, okay, if that's the way you feel about it; and I says, I want you to know one thing, I says, I have tried my best to do a good job in the years I've been here, and I know you all been watching me, and have for quite a while, trying to get something on me; and I said, I guess you know that you'll have to deal with the Labor Board. . . . They just laughed, and didn't give no reply."

The Union argues that the examiner erred in excluding evidence that on March 24 or 25, just before the writeup of March 26, Coker was present as a potential witness at a representation hearing held to establish the bargaining unit prior to a Board election. We think that any error committed was harmless, in that both the examiner and the Board were fully aware that a number of Coker's writeups followed close upon his union activity.

bership in the Union, particularly his activity as a member of its organizing committee and his attempted advocacy of its cause in the newspapers.

The Board disagreed. It based its conclusion that Coker was not discriminatorily discharged on the fact that in the thirteen years prior to his discharge Coker had received twelve personnel action reports, eight specifically mentioning Coker's poor inspecting, and on its acceptance of the Company's contention that uniform inspection procedures are important to its program of quality control, regardless of whether unorthodox methods of inspection might sometimes result in fewer seconds for a particular individual.[6]

Here, as in the case of Faulkenberry's discharge, the Trial Examiner and the Board drew different inferences from the same record, and we must acknowledge that on the record considered as a whole there is substantial evidence to support the Board's finding. It may well be that there is also substantial evidence to support the examiner's conclusion, but that is just a way of saying that this was a close case. Most of the discharges, however, were anything but that.

James Hill worked in the finishing department at the Company's Slater plant. He was an early Union adherent, and took part in a union campaign in September, 1963. Hill testified that in October, 1963, he began to lose overtime, and data submitted by the Company corroborate his

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[6]Company witnesses testified, in effect, that improper inspecting procedures were contagious among the weavers.

claim. He testified that after he filed a charge with the Board in May, 1964 he was given some overtime. On August 31, 1964, Hill helped to pass out a union leaflet on which his name appeared; immediately thereafter, his supervisors began to watch him closely. On September 4, 1964, his general shift overseer, Ed Brinkley, wrote him up for "bothering [employees] on the job and interfering with their work." On the writeup Hill was advised: "[A]ny further complaints of this nature [and] you will be subject to discharge." When Hill inquired as to who had complained, Brinkley refused to tell him. According to Hill's testimony, credited by the Trial Examiner, either Brinkley or another overseer asked him why he did not resign his employment. Following the writeup, three anti-union employees inaugurated a hazing campaign against Hill. His reaction, understandably enough, was to ask Brinkley to stop the hazing. Thereafter, Hill came to Brinkley on a few occasions to let him know that he was not talking to other employees whenever he could avoid it. Brinkley considered this aggravating. When Hill came to him on September 14, to tell him that he had just told a fellow member of the union organizing committee that he couldn't talk to him, Brinkley "didn't see any use in [Hill] coming to me with little things like that," and Hill was discharged. Brinkley testified:

> I told James at that time, I said, Mr. Hill, I said, I'm tired of you coming to me with these complaints about employees bothering you, and I said, as far as I'm concerned, you're through.

The Board found that Hill had been discharged and denied overtime work because of his union activity, in violation of Section 8(a)(3) of the Act.

As in most of the other discharges involved in this case, the Company's anti-union motivation in discharging Hill was patent. Another employee was dismissed for bringing leaflets into a plant and spreading them around; a Company investigation of the incident had failed to disclose who was responsible, and the employee discharged had not even been questioned during the investigation. We see no purpose in continuing to describe the individual discharges at issue in the case. We have considered the parties' arguments as to each of them and uphold the Board's determination as based on substantial evidence on the record as a whole.

The Board has once again issued an unusually broad order against the Company. We have no doubt that the circumstances call for an unusually broad order. The Trial Examiner fairly summarized the situation as follows:

> The record of the 1965 hearing reflects the continued, systematic determination of this employer as revealed by the record of the 1964 hearing, to destroy the union root and branch by discharging its most active members on any pretext which might come to hand, or could be invented, by threatening to discharge others unless they come to management and renounced [sic] the Union, and by provoking the resignation of still others from [the Company's] employment. No other conclusion can be drawn than that [the Company] has largely succeeded in its purpose.

The Board's order contains the usual cease and desist, reinstatement, and back pay provisions, which are unquestionably proper.[7] In addition, the order requires the Company: (1) to post the usual notice in all of its plants located in North and South Carolina (not just in the plants where unfair labor pactices have occurred); (2) to mail a copy of the notice to each employee at every plant; (3) to convene all of its employees, by departments and by shifts, and have a responsible Company official read them the notice; (4) to immediately grant to the Union (upon the Union's request) reasonable access, for a one-year period, to the Company's bulletin boards and all places where notices to employees are customarily posted; and (5) to immediately give to the Union, upon request made within one year, a list of the names and addresses of all employees in the Company's plants in North and South Carolina.

We approved the first two requirements, in their application to all of the Company's plants in North and South Carolina, in *J. P. Stevens & Co.* v. *N. L. R. B., supra.* We approve them again, for the reasons given there, 380 F. 2d at 303-304.

The third requirement, that the Company read the notice to its employees, was also contained in the order in *J. P. Stevens & Co.* v. *N. L. R. B., supra.* We thought that in view of a number of considerations, including the element of humiliation in having Company officials personally

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[7]We include in these the provision that employees Rosemond and James Hill be offered overtime work in accordance with prior practice and be made whole for loss of overtime pay.

and publicly participate in reading the notice, the order should be enforced only at those plants where the Board found unfair labor practices, and should be modified to afford the Company the alternative of having the notice read by Board representatives, rather than by its own officials.[8] The Board has stated in its brief that in the circumstances of this case the policies of the Act may be effectuated with an order similarly limited; accordingly, the third requirement will be enforced only at those eight plants where the Board found unfair labor practices in this case, and the order is modified to provide that at the Company's option the notice will be read by representatives of the Board rather than by the Company's officials.[9]

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[8]The Company contends, as it did in *J. P. Stevens & Co.* v. *N. L. R. B.*, that this requirement is tantamount to coercing a confession, and reminds us that "During centuries past, countless thousands suffered oppression and tortures and death rather than confess they had committed wrong when they deeply and devoutly believed that they had not." Once again, we regard the requirement somewhat less emotionally than does the Company.

The Company suggests that having the notice read by Board representatives amounts to a "take over" of the Company's plants. We are sure that the Board has no such intention. It is also suggested that the notice, when read, should be amended so that each paragraph is headed "The Company is ordered," instead of "We will not." We see no need for such an amendment.

[9]The Company states in its brief that there were unfair labor practices found in seven plants. This is in error; the Board found unlawful discharges only in seven plants, but found unfair labor practices had occurred in the Estes plant as well, although it reversed the trial examiner's finding that William E. Coker, employed at the Estes plant, had been unlawfully discharged.

Once again, we do not hold that a reading provision without this alternative of reading by Board representatives would never be appropriate. See 380 F. 2d at 305, n. 21.

We noted in *J. P. Stevens & Co.* v. *N. L. R. B., supra,* that the Fifth Circuit has refused to enforce an order similar to the one which we modified in that case. *N. L. R. B.* v. *Laney & Duke Storage Warehouse Co.*, 369 F. 2d 859, 869 (5 Cir. 1966). The District of Columbia Circuit has now, in a 2-1 decision, taken a view in accord with that of the Fifth Circuit, and has also rejected the modification which we approved in *J. P. Stevens & Co.* v. *N. L. R. B.* and which we again utilize in this case. *International Union of Electrical, R. & M. Workers* v. *N. L. R. B.*, 383 F. 2d 230 (D. C. Cir. 1967). That court's reasoning is as follows:

> [G]iving the company the choice of reading the notice or having a representative of the Board read it to the employees . . . creates a problem more severe than the one it supposedly solves. The practical effect of the exercise of the option is to put the imprimatur of the Board on both a particular union's activities, as well as on union activities in general, by having a representative of the Board read a notice resulting from unfair labor practices which arose because of, and from, company activity in opposition to a union's organizational activities. It follows, then, that the Board is in the position of not being completely neutral, although that is the position which the Board is legally duty bound to take. Further, we would not, sua sponte, offer as an alternative to the employer a choice between a company or a Board representative giving the public reading; such a de novo remedy would run counter to the premise that remedies should be worked out by those having the most experience and expertise in the area. 383 F. 2d at 233, n. 5.

We cannot agree that having a Board official read a Board order puts the imprimatur of the Board on a particular union's activities or on unions in general. Of course the Board must be neutral in its approach to any proceedings before it, but once it has been found that an employer has acted unlawfully, the question is not how the situation can be neutrally remedied; it cannot, for a remedy is by definition not neutral. As Judge Wright of the D. C. Circuit said in dissent: ". . . adequate remedies are needed to restore the balance." 383 F. 2d at 234. The reading of a Board order by a Board official surely does nothing more to destroy the Board's neutrality than does the customary heading on notices posted by employers pursuant to Board orders stating that the employees are being notified "pursuant to a decision and order of the National Labor Relations Board."

We do not consider our modification in *J. P. Stevens & Co.* v. *N. L. R. B.* a departure from the principle that remedies should be worked out by those having the most experience and expertise in the area. We said in that case:

> [T]he reading provision was . . . designed . . . , as the Board said, "to undo the effect" of numerous and egregious unfair labor practices by insuring that the full counteracting force of the remedial order would be felt by the employees. 380 F. 2d at 305.

We saw an element of humiliation in having Company officials personally participate in the reading (an area in which we do not doubt our competency), and the opportunity to eliminate that element without changing the im-

pact of the Board's remedy.[10] The Board states in this case that a reading by Board representatives will effectuate the policies of the Act. And we do not consider the order to be penal in nature. Compare *Local 57, International Ladies' Garment Workers Union* v. *N. L. R. B.*, 374 F. 2d 295 (D. C. Cir.), cert. denied 387 U. S. 942 (1967).

The next provision of the Board's order which we must consider is that requiring the Company to give the Union reasonable access to its bulletin boards for a period of one year. We refused to enforce a similar provision in *J. P. Stevens & Co.* v. *N. L. R. B., supra,* because "the Board made virtually no findings concerning the issues relevant to solicitation, and made no adequate showing that the Company's bulletin boards are necessary to the Union in its organizational campaign." 380 F. 2d at 305. In the case before us, the Board contends that Union access to the bulletin boards is necessary in order to offset the Company's use of the boards in its campaign of coercion and in the posting of lists of employees who had joined the Union, the names of those employees who withdrew being "scratched" from the lists. We think that in view of the Company's use of the boards in combatting the Union, giving the Union reasonable access to them will effectuate the purposes of the Act, in that it will help to restore to the employees the opportunity to hear all viewpoints. We will therefore enforce this portion of the order.[11]

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[10]See Ross, Analysis of Administrative Process Under Taft Hartley, 63 Lab. Rel. Rep. 132, 153 (BNA 1966).

[11]In granting enforcement, we take account of the Company's particularly intensive anti-union campaign, somewhat more serious than that in *N. L. R. B.* v. *H. W. Elson Bottling Company,* 379 F. 2d 223 (6 Cir. 1967), where a similar requirement was granted enforcement.

The Company contends that since the Board has not limited the nature of the material which the Union may place on the bulletin boards, or the frequency of the Union's access, controversy over such questions "could produce a veritable tangle of litigation," and that the order places in the Union's hands a large measure of control over operations in the Company's plants, for "by means of what it might place in front of employees while at their work, the Union could excite them, arouse them, distract them, and create widespread deterioration of morale and performance . . ." The Board's order limits the Union to "reasonable" access to the bulletin boards. We trust that the Union will bear that in mind, and that the Company does not intend to litigate the reasonableness of every piece of material posted by the Union.

The final provision of the order requiring our attention is that which directs the Company to provide at the Union's request a list of the names and addresses of all of its employees in North and South Carolina. We do not think that this provision, in these circumstances, is designed to effectuate the policies of the Act.

The power of the Board to command affirmative action is of course remedial, and "is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act." *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 236 (1938). The Board contends, in support of the provision in question, that the fear generated by the Company's campaign of intimidation will hinder lawful propa-

ganda activities during nonworking time on company premises, that so far as the record shows the Union has no other effective means of personally contacting all of the Company's employees, and that it cannot be unduly burdensome on the Company to provide the list. The broad notice requirements and the provision of Union access to the Company's bulletin boards are appropriately designed to dissipate the fear in the atmosphere within the Company's plants generated by its anti-union campaign. The requirement that the Company furnish a list of its employees is, as the Board points out, designed to do more than that—it is designed to afford the Union a means of personally contacting all of the employees. The Supreme Court has made it clear that the employer's obligations to his employees to allow them to discuss self-organization among themselves is much broader than the obligation owed nonemployee organizers; thus the access of a nonemployee organizer to the employer's property is governed by considerations different from those governing employee organizational activity on the employer's property. *N. L. R. B.* v. *Babcock & Wilcox Co.*, 351 U. S. 105, 113 (1956). Compare *N. L. R. B.* v. *S. & H. Grossinger's Inc.*, 372 F. 2d 26 (2 Cir. 1967). In this case, the problem is nonemployee access to an employer's list of employees, and we think that considerations similar to those governing nonemployee access to an employer's property must govern.

The employees' rights, which the Act was designed to protect, depend "in some measure on the ability of employees to learn the advantages of self-organization from

others." *N. L. R. B.* v. *Babcock & Wilcox Co.*, 351 U. S. at 113. Their ability to do this may in some cases turn on a union's gaining access to a list of an employer's employees, but we do not think the Board has shown that to be the case here. The Board argues that by enabling the Union to contact all employees outside the plant and make known its views in an atmosphere relatively free of restraint and coercion, the list requirement will resuscitate to some extent the organizational opportunities that have been extinguished. The policies of the Act call instead for a change in the atmosphere.

The Board refers us to its rule, announced in *Excelsior Underwear Inc.* and *Saluda Knitting Inc.*, 156 NLRB 1236 (1966), that where a representation election has been scheduled the employer must file with the Regional Director a list of all the eligible voters, which will then be made available to all parties. The need for an informed electorate, cited by the Board in establishing the *Excelsior Underwear* rule, and cited by the Fourth Circuit recently in holding such a list compellable in a District Court proceeding, *N. L. R. B.* v. *Hanes Hosiery Division—Hanes Corporation* (4 Cir., No. 11,202, decided October 3, 1967), is not present in the context of a union organizing campaign.

We deny enforcement to that provision of the order directing the Company to make available a list of its employees; otherwise the Board's petition for enforcement of the order (as modified with respect to the reading of the notice) is granted, and the petitions to review are denied.

DECREE OF THE COURT BELOW

United States Court of Appeals

FOR THE SECOND CIRCUIT

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 31,164

J. P. STEVENS & CO., INC.,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent,
and
TEXTILE WORKERS UNION OF AMERICA, AFL-CIO,
Intervenor.

No. 31,245

DECREE ENFORCING AS MODIFIED AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before:

LUMBARD, *Chief Judge*, SMITH *and* FEINBERG,
Circuit Judges.

THIS CAUSE came on to be heard upon the petitions of Textile Workers Union of America, AFL-CIO and J. P.

Stevens & Co., Inc. to review and set aside a certain order issued against J. P. Stevens and Co., Inc., its officers, agents, successors and assigns by the National Labor Relations Board on March 6, 1967 and upon the Board's answer and cross petition to enforce said order. The Court heard argument of respective counsel on October 10, 1967, and has considered the briefs and transcript of record filed in this cause. On December 27, 1967, the Court being fully advised in the premises, handed down its decision denying the petitions to review and enforcing as modified the Board's said order. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that J. P. Stevens and Co., Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discharging, forcing the termination of, refusing overtime work to, or otherwise discriminating against employees in regard to hire or tenure of employment or any term or condition of employment in order to discourage membership in Textile Workers Union of America, AFL-CIO (hereinafter called the Union), or any other labor organization.

(b) Discharging or otherwise discriminating against employees for giving testimony under the National Labor Realtions Act, hereinafter called the Act.

(c) Engaging in surveillance of employees' activity in respect to union organization or giving the impression thereof.

(d) Interrogating any employee concerning such union activity by him or other employees in a manner constituting a violation of Section 8(a)(1) of the Act.

(e) Threatening its employees with discharge or other reprisals if they become or remain members of the Union or give any assistance or support to it.

(f) Altering its working conditions for the purpose of defeating the organizational efforts of its employees or of Textile Workers Union of America, AFL-CIO, or the efforts of any other labor organization of its employees.

(g) Encouraging or permitting employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

(h) Intimidating, coercing, encouraging, and assisting employees in withdrawing from the Union.

(i) Instructing employees to watch for and report to the Respondent the union activities of other employees.

(j) Requiring its employees to remove and prohibiting its employees from wearing Union insignia.

(k) In any other manner interefering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and to refrain from any or all such activities.

2. Take the following affirmative action which the Board has found will effectuate the purposes of the Act:

(a) Offer to the employees, whose names appear in the Appendix attached hereto, reinstatement to their former positions or to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed; and make each such employee whole for any loss of pay he may have suffered by reason of the company's discrimination against him, in the manner described in "The Remedy" section of the Trial Examiner's Decision.

(b) Offer to James Rosemond and James Hill overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them, and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest at 6 percent per annum.

(c) Notify those employees listed in the Appendix attached hereto, if presently serving in the Armed Forces of the United States, of their right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records,

timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the rights of employment under the terms of this Decree.

(e) Mail a copy of the attached notice marked "Appendix" to each employee, and post copies at all of its plants located in the States of North Carolina and South Carolina. Copies of said notice, to be furnished by the Regional Director for Region 11 of the National Labor Relations Board, Winston-Salem, North Carolina, shall be sighed by a representative of the Company. Thereafter, a copy shall be mailed by the Company to each of its employees working in its North Carolina and South Carolina plants, and additional copies shall be posted by it and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(f) Upon request of the Union, immediately grant the Union and its representatives reasonable access, for a 1-year period beginning with the issuance date of this Decree, to its bulletin boards and all places where notices to employees are customarily posted.

(g) Convene during working time, by departments and by shifts, all its employees in the plants where the unfair labor practices have occurred, and either a responsible official of the Company at Departmental Su-

pervisor level or above, or a Board Agent, shall read to department employees the contents of the attached Appendix.

(h) Notify the Regional Director, in writing, within 10 days from the date of this Decree, what steps have been taken to comply herewith.

FILED: MARCH 26, 1968.

J. EDWARD LUMBARD

Judge, United States Court of Appeals for the Second Circuit

J. JOSEPH SMITH

Judge, United States Court of Appeals for the Second Circuit

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
A DECREE OF THE

United States Court of Appeals for the Second Circuit Enforcing as Modified an Order of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discharge, force the termination of, refuse overtime work to, or otherwise discriminate against employees in order to discourage membership in or support of the TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against employees for giving testimony under the Act.

WE WILL NOT engage in surveillance of employees' activities with respect to union organization.

WE WILL NOT interrogate any employee concerning such activity by them or other employees.

WE WILL NOT threaten our employees with discharge or other reprisal if they become or remain members of the Union or give any assistance or support to it.

WE WILL NOT alter our working conditions for the purpose of defeating the organizational effort of our

employees or of TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or the efforts of any other labor organization of our employees.

WE WILL NOT encourage or permit employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

WE WILL NOT encourage and assist employees in withdrawing from the Union.

WE WILL NOT instruct employees to watch for and report to the Company the union activities of other employees.

WE WILL NOT prohibit employees from wearing Union insignia.

WE WILL NOT intimidate and coerce employees into withdrawing from the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities.

WE WILL offer to the employees named below immediate and full reinstatement to their former or sub-

stantially equivalent positions, without loss of seniority or other rights and privileges, and WE WILL MAKE THEM WHOLE for any pay they lost because of the discrimination against them, with interest.

Ben Suratt	Frank Wojeck
Hubert Varnadore	James Hill
John Fulbright	Leroy Reeves
Oliver Durham	Willis Young
Willard Page	Rufus Finley
Junior Hulsey	Donald Jones
W. O. Epps	John Little
Jake Owens	Leslie Hancock
Arthur Dean	Juanita Faulkenberry

We will offer to James Rosemond and James Hill overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them, and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld form each of them, with interest.

All our employees are free to become, remain, or refrain from becoming or remaining, members of TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization.

J. P. STEVENS AND CO., INC.
(Employer)

Dated..... By.....
(Representative) (Title)

NOTE: We will notify the above-listed employees, if presently serving in the Armed Forces of the United States, of their right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1624 Wachovia Bldg., 301 North Main St., Winston-Salem, North Carolina 27101. (Tel. No. 723-2911, Ext. 371).

DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

163 NLRB No. 24

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

Cases Nos.

11-CA-2435	11-CA-2525	11-CA-2549
11-CA-2464	11-CA-2450	11-CA-2550
11-CA-2484	11-CA-2518	11-CA-2552
11-CA-2485	11-CA-2519	11-CA-2564
11-CA-2487	11-CA-2531	11-CA-2584
11-CA-2496	11-CA-2532	11-CA-2506
11-CA-2501	11-CA-2534	11-CA-2720
11-CA-2503	11-CA-2539	11-CA-2725
		11-CA-2703

J. P. STEVENS AND CO., INC.

and

INDUSTRIAL UNION DEPARTMENT, AFL-CIO

DECISION AND ORDER

On January 13, 1966, Trial Examiner Horace A. Ruckle issued his Decision in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial

Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent, the General Counsel, and the Charging Party filed exceptions to the Decision and supporting briefs.[1]

The National Labor Relations Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications noted below.[2]

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[1]The Charging Party's request for oral argument is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2]The Trial Examiner's Decision contains certain inadvertent errors and omissions which are corrected, as follows: *TXD* p. 4, line 33, "July 23, 1964", is changed to "July 24, 1964"; p. 4, line 37, "8(b)(4)" is changed to "8(a)(4)"; p. 7, line 4, "March 22, 1965", is changed to "March 17, 1965"; p. 7, line 43, "March 19, 1965", is changed to "March 16, 1965"; p. 13, line 42, "September 10", is changed to "September 11"; p. 15, line 2, after the sentence ending with the word "cloth" add the following, "Durham worked his regular shift the morning of September 11, during which he was shown a personnel action report written by Cheek for 'staying in waterhouse too long' "; p. 15, line 15, "on his first shift" is changed to "after his second shift"; p. 18, line 41, "Hall" is changed to "Hulsey"; p. 21, line 29, "Thomas' " is changed to "Corbett's"; p. 23, line 60, after the word "about" add the words "these complaints"; p. 25, lines 60-61, strike the entire sentence beginning with "When" and ending with "again" and substitute therefor the following, "Later, Griffin spoke to Dean about this incident and told Dean not to do it again."; p. 25, line 61, "McKee" is changed

The Trial Examiner found that the Respondent had unlawfully discharged 19 of the employees named in the complaint, and further discriminated against another employee in the assignment of overtime work. He also found numerous instances of interrogation by the Respondent of employees about their union activities, threats by the Respondent concerning unionization and employees' union affiliation, and other conduct contravening Section 8(a)(1) of the Act. We adopt the Trial Examiner's conclusions as to all but 3 of the alleged discriminatees, and modify his decision in the respects hereinafter noted.

8(a)(1) Conduct

The Trial Examiner inadvertently failed to find specifically that certain conduct of the Respondent, which he described, violated Section 8(a)(1) of the Act, although he did make general findings to this effect in his "Conclusions of Law." In order to clarify his Decision, we list all the incidents mentioned in his Decision,[2] which, in context, we find violated Section 8(a)(1).[3]

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to "Dean"; p. 28, line 10, "discharge" is changed to "appearance at the hearing"; p. 31, line 50, "excepted" is changed to "exception"; p. 32, line 45, "take" is changed to "talk to"; p. 42, line 47, "results" is changed to "rounds"; p. 44, line 14, add a period after the word "supper"; p. 44, line 15, before the first word "and" on the line, add the following, "They then went to the waterhouse for a smoke"; and p. 44, line 57, "Finley's" is changed to "Little's".

[2]Only those incidents specifically alleged in the complaint to violate Section 8(a)(1) are discussed herein.

[3]All page and line references are to the Trial Examiner's "slip" Decision. We hereby direct that upon publication of our Decision in the Board's volumes, the page references be converted accordingly.

Threats of reprisals, promises of benefits, and related acts of interference: TXD p. 17, lines 27-38, Hawkins' statement to Page that the shift and general overseers were "giving him [Hawkins] hell" because of the Union leaflet with Page's name on it, Hawkins' reproach of Page and two other employees for not waiting before they "came up with something like that [the leaflet]", and Hawkins' reminder that Page's name appeared on a Union leaflet, made in response to Page's query as to why his supervisors were "mad at" Page; p. 17, lines 38-40, Hawkins' request that Page speak to Hall to try to get Hall to quit the Union, and to get himself out, made at the time Hawkins remarked that he had "good things in mind for" Page and Hall; p. 17, lines 45-49, Hawkins' statement, in the context of a discussion of the Union, that the Respondent could fire Page just about anytime it wanted, that Hulsey had "left himself open" dozens of times to discharge, and now it looked like Hawkins was going to have to run them off; p. 17, lines 49-51, Hawkins' suggestion that Page's son, Richard, who had left the Respondent's employ, could get his job back if he would get out of the Union; p. 17, lines 53-56, Hawkins' statement to Hulsey, Page, and Hall that they had "messed [Hawkins] up" by signing union cards, that they were the best workers Hawkins had and he was "going to have to do something about it"; p. 18, lines 1-8, Hawkins' query of Page as to whether he, Hulsey, and Hall had made up their minds about getting out of the Union, and Hawkins' statement that he would not hit them "below the belt" and that before he would fire them he would "warn" them; p. 19, lines 37-43,

Greer's query of Epps as to whether he had seen Lollis about withdrawing from the Union, and Greer's suggestions that Epps do so, as well as Greer's prognostication that "something was going to happen" and a man of Epps' age "can't get a job just anytime anywhere he wants it"; p. 42, lines 36-38, Jones' statement to Spearman that if they did not keep the Union out of the plant it would be a mess, made after Jones asked Spearman if he was going to vote in the election.

Interrogation: TXD p. 20, lines 47-51, Corbett's inquiry as to Owens' whereabouts the previous day, a Sunday, on which Owens had attended a Union meeting; p. 41, lines 34-40, Waldrup's query of Henderson as to whether Union organizer Stamps had been to Henderson's home and whether Henderson had run Stamps off; p. 42, lines 27-31, McCall's questioning of Spearman as to whether union people had been to see Spearman; and p. 42, lines 33-36, Jones' questioning of Sherman about Sherman's companion at the Union meeting.

Creating the impression of surveillance: TXD p. 41, lines 42-50, Waldrup's revelation to Henderson that Waldrup knew that Union organizers had been to Henderson's home, that an organizer had opened the gate for Henderson's wife on one occasion, and that the Respondent knew when organizers came to an employee's home and "what kinds of cars they [the organizers] drive."

Union insignia: TXD p. 7, lines 26-34, Carter's order that Hubert Varnadore go home and take off his "AFL-CIO" T-shirt.

Attempt at constructive discharge: TXD p. 32, lines 19-29, Brinkley's or Elrod's request that Hill resign his employment, made at the time Hill was shown a writeup which related to protected union activity.

Discriminatory application of a no-solicitation rule: TXD p. 32, lines 36-51, Brinkley's warning that Hill would be discharged for "bothering" employees about the Union on the job, while at the same time permitting anti-union employees to harass Hill at work by following Hill back and forth and asking him if it was his name on the Union leaflet and by propounding other questions about the Union.

8(a)(3)

Of the 19 employees the Trial Examiner found were discharged in violation of the Act, we affirm him as to 17. We do not agree with the Trial Examiner that the General Counsel has proved by the preponderance of the evidence that Wylie Hill and William Coker were unlawfully discharged. In addition, contrary to the Trial Examiner, we find that Juanita Faulkenberry was discharged in violation of Section 8(a)(4).

Wylie Hill

From 1952 until July 16, 1964, when he was laid off, Hill had worked for Respondent in the yard of Republic plant nos. 1, 2, and 3 as a laborer under the supervision of Edward Locklair, outside overseer, and Harold Cloud, yard leader.

Hill joined the Union in the summer of 1963, and informed Locklair of this fact shortly after Thanksgiving,

1963. Shortly thereafter, Supervisor Locklair told Hill that he should not sign a union card and that if he did so, he would lose his job. Hill testified as a General Counsel witness at a hearing on March 31, 1964, in *J. P. Stevens and Co., Inc.*, 157 NLRB No. 90.[4]

Hill's principal duty was to pick up trash from trash bins at the three plants by hand or pitchfork and place the trash in a dump truck, by which it was hauled to a trash pile. Working with Hill were Floyd McCrorey, who drove the dump truck and assisted in picking up trash, and Samuel Q. Mahoney, who did the same work as Hill. From time to time Hill also mowed the lawns, as did Mahoney and McCrorey, and helped unload cotton from railroad cars and store it in the warehouse, as did about 6 or 7 other laborers.

In 1962, the Respondent began consideration of methods for streamlining the collection of trash, and, in October or November 1963, for the first time began experimenting with a type of trailer which it believed would expedite handling of trash. Under this new method of collection, 7 trailers are placed in the areas around the warehouses where the trash bins had been, and trash is dumped directly into these trailers. Periodically, a pickup truck driven by one of the yard crew is attached in turn to each trailer. After spending about 4 or 5 minutes cleaning up around the trailer, the driver hauls the trailer to a trash pile, where he dumps the trash using a winch attached to the

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[4]The above-cited *Stevens* case is hereinafter referred to as *J. P. Stevens I*.

trailer. He then returns the trailer to its appointed spot. This method of trash collection requires the employment of only one man, the driver, as compared to the three men needed under the old method.

At first, the Respondent used only two of the new trailers. Then, on or about July 4, 1964, it employed for the first time a full complement of seven trailers, eliminating completely the dump-truck method of trash collection and with it, Hill's job.

Hill was discharged on July 16. Thereafter, Mahoney was assigned the job of hauling the trailers and McCrorey, with one helper, McClintock, was assigned to hauling cotton and staple from the warehouse to the mill and unloading it at the mill. Subsequent to Hill's layoff the Respondent hired two new employees, Price and Watson, for various laborer jobs in the yards. Others in the yard with less seniority than Hill were kept on after Hill was discharged.

The Respondent's explanation for Hill's layoff and the retention of others with less seniority, given to Hill at the time of his discharge, was that all the available laborer jobs required a knowledge of reading and writing or an ability to operate complex mechanical equipment. The Respondent asserted that Hill was illiterate, and was unable to operate the complex equipment, whereas all the other laborers could read and write and could run such equipment.

According to Locklair, at the time of Hill's discharge he had considered Hill for two or three different jobs. One

involved operating a forklift, in which the driver moves levers controlling the blades of the lift and manipulates a gear shift. Although, according to Yard Leader Cloud, all laborers were given the chance to learn to use such equipment, Hill had never availed himself of this opportunity. Furthermore, Locklair testified that, sometime before Hill's discharge, the Respondent began using a riding mower with three forward gears and one reverse gear, which replaced the power mower Hill previously had used. Hill was "put on" this more complicated device, but could not operate it. From this, Locklair concluded that Hill would be unable to maneuver the even more difficult forklift.[5]

Another job open at the time Hill was discharged involved bailing waste. Locklair explained that for this job it was necessary to read the classification on seven different bins in which the different types of waste were placed, as well as weigh the waste and log it in a book. Locklair rejected Hill for this job because of his inability to read and write.

Locklair was unable to place Hill in McCrorey's or Mahoney's job driving a truck as this required a driver's license which Hill did not have. Nor could Hill do McClintock's job, assisting Mahoney on the dump truck transporting cotton and staple, as this job involved reading the names of at least seven grades of cotton, and writing down numbers for the staple.

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[5]According to the testimony of employee Mahoney, Hill had admitted to Mahoney that he could not operate a forklift or the riding mower.

Hill's illiteracy had come to the Respondent's attention much earlier when Hill was assigned to transporting cotton bales by handtruck from railroad cars to a weighing platform, prior to storage in the warehouse. Each bale had a tag with a number which the laborer transporting the bale was required to call out to either Cloud or Locklair, who stood by the scales and recorded the weight of the bale. Hill was unable to call out the numbers.[6] Thereafter, Hill was assigned on one or two occasions to moving the bales from the weighing platform to the warehouse, a job which involved no reading or writing, but which, the record shows, was not then a full-time job, and one which is now accomplished primarily with forklifts.

In concluding that the reason offered by the Respondent for not placing Hill in another job—that Hill was illiterate and all other jobs required reading and writing—was a pretext, the Trial Examiner emphasized that Mahoney, who was retained, "was little if any more literate than Hill, and others of the 20-25 employees doing labor work must similarly have been low in the educational scale." The record evidence is to the contrary. Mahoney, who, unlike Hill, had a driver's license, testified in detail as to the reading and writing requirements of the above-described job hauling cotton and staple. Nothing in his testi-

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[6]Hill testified that he could not read papers or signs but that he could read numbers. Hill admitted, however, that he had not read the numbers on the bales of cotton. And, he did not otherwise contradict Locklair's and Cloud's testimony regarding this part of his work. As for Hill's writing ability, the record shows that although Hill was able to print his name, he usually signed his name with an "X".

money indicated that he was illiterate. Frank Beaty, another laborer, testified that he filled out a job application which asked what grade he had completed in school and which had some elementary mathematics problems he was required to solve. Cloud testified that all the men hired after Hill was laid off could drive a truck and a "tow motor", could stencil cotton, which involves reading, and, indeed, could do "any job" in the yard. Finally, Hill himself admitted that all others with less seniority than he who were retained could read and write.

The Trial Examiner also found that the jobs performed by the laborers "required no ability to read and write, and Hill had on occasions performed most of them." The evidence as detailed above does not justify this conclusion. Thus, the Respondent submitted uncontroverted evidence that the jobs open required some degree of literacy or an ability to operate complicated machinery, and that all other retained and newly hired employees could read and write and operate such devices as a forklift and riding mower. In these circumstances, and notwithstanding the Respondent's earlier threat to Hill that he would lose his job if he signed with the Union, we are not convinced that Hill's discharge was discriminatorily motivated. Accordingly, we shall dismiss the complaint as to Hill.

Juanita B. Faulkenberry

Faulkenberry worked as a weaver in Republic plant no. 1 for 12 or 13 years until her discharge on October 23, 1964. Her 30 years of experience as a weaver also included jobs for 2 or 3 years at the Republic plants nos. 2 and 3.

Faulkenberry's work record with the Respondent was a good one until a time just prior to her discharge. Thus, when she was working at plant no. 1 she was transferred on a trouble-shooting assignment to a set of looms at plant no. 2 to get the looms "straightened out." She helped to reduce the percentage of seconds on these looms. While at plant no. 3, Faulkenberry was complimented by Superintendent Burns for her "nice work" on a difficult style of cloth. Soon after she came to plant no. 1, she was the first weaver in 18 months who had less than 5 percent seconds, and was complimented by the general overseer of weaving, Arthur Justus, for her good work.

On March 27, 1964, Faulkenberry testified at the first hearing as a witness for the General Counsel. Her testimony, as reported by the Trial Examiner,[7] was that her loom fixer, Ralph Harrison, alleged to have been discharged in violation of Section 8(a)(3), was "working very hard" on a job that had been left "in real bad shape" and that although she had, on occasion, complained to her immediate supervisor, Simean Dawkins, about Harrison's slowness in responding to flags, she did not do so "too much". Faulkenberry's testimony, therefore, in part contradicted that of Dawkins, which was that he had "many" complaints from Faulkenberry about Harrison. Her testimony concerning Harrison's hard work was relied on by the Trial Examiner in discrediting Dawkins' and Justus' explanation for the discharge—that Harrison was a poor worker—and in finding instead that the discharge was discriminatorily motivated.

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[7] *J. P. Stevens and Co., Inc.*, 157 NLRB No. 90, *TXD* p. 13.

According to Faulkenberry and her then loom fixer, Donald Carpenter, several weeks after Faulkenberry testified, Justus watched her more closely while she did her normal work. Carpenter was discharged during the summer of 1964 and was replaced by Billy Sneed, a learner-fixer who had never before fixed looms. In September, with Sneed fixing on almost all her looms, Faulkenberry was given a very difficult style of cloth to weave which made it harder for her to "match filling" and to start up her approximately 20 looms. At about this time, Peterson, the weaver in charge of Faulkenberry's looms on the shift preceding Faulkenberry's, complained that the job was too hard for her and was transferred to another job. Darby was assigned to replace Peterson. Unlike Peterson, Darby did not leave the looms in good working order. Faulkenberry's uncontradicted testimony on this point is as follows:

> . . . [S]he [Darby] would leave the warp in such a mess it would take me two or three hours to start them up . . . we'd have to move ends from the selvage over to the center, or to the body of the cloth and when she would move those ends she would break off the draw wires and leave them in, the ends would run up in the draw wires and mat up sometime. It would take me ten or fifteen minutes to cut out the mat up and get one loom started up.

The combination of a learner loom fixer, a difficult style, and a weaver on the preceding shift who left the looms in "a mess", a set of circumstances which no other weaver

was confronted with, resulted in a decrease in Faulkenberry's production to between 75 and 80 percent.

On a number of occasions Faulkenberry complained to her supervisors about Darby. She also requested a better loom fixer and asked Justus to put her on a particular better set of looms. Dawkins and Justus took no action with respect to her requests, other than promising to speak to Darby. Dawkins told Faulkenberry that the Respondent could not find experienced loom fixers, and Sneed remained on her job. Noe, a weaver with less seniority than Faulkenberry, was transferred to the better looms because, according to Justus, she was a "better quality weaver" and the Respondent was having trouble with the particular style on those looms. Noe was assigned to the looms despite the fact that her production, on one occasion, had been as low as 77 percent, and her seconds had been as high as 34 percent, much higher than Faulkenberry's and far above what the Respondent considered satisfactory.[8] As indicated above, Peterson, the second shift weaver, had also been transferred from the difficult style at her request, but no action was taken on Faulkenberry's request for a similar transfer.

On the morning of October 16, 1964, about a week before her discharge, Faulkenberry tolk Dawkins that on three occasions she had flagged a loom that had been standing idle several hours, but that it had not been fixed. Later that same day, Dawkins gave Faulkenberry a per-

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[8]Noe was not, however, given a personnel action report for poor quality or low quantity on this occasion.

sonnel action report for low production. This was the first warning, oral or written, Faulkenberry had ever received. When Dawkins showed Faulkenberry the writeup, she reminded him that she did not have an experienced loom fixer, whereupon Dawkins admitted that he knew this.

The last week Faulkenberry worked she was assigned an experienced loom fixer, Marvin Sheehane. Her production increased to an acceptable 88 percent. Nevertheless, on October 23, 1964, she was discharged "for low production" and "production changes" which, according to the Respondent, necessitated a reduction in the number of weavers from 63 to 60. Justus chose to eliminate three weavers who were the lowest producers: Flynn, Reufelt, and Faulkenberry. Justus admitted that Flynn, whom he laid off, had been in and out of the Veterans Hospital and was "a sick man". Reufelt was not laid off, but instead was transferred to a harness cleaning job which Justus admitted Faulkenberry could do. He did not, however, attempt to find out whether Reufelt had seniority over Faulkenberry, and, indeed, recommended on Faulkenberry's termination slip that she not be considered for another job in the plant, despite her substantial seniority and apparently unblemished record in jobs as a smash hand and harness cleaner. Although admitting that job assignments and layoffs are usually made on the basis of seniority, Justus offered no explanation for his preference of Reufelt for the harness cleaning job except that Reufelt was a learner-weaver who had previously done harness cleaning. Neither did he explain his determination that Faulkenberry was not suitable for another nonweaving

job. At the same time Justus discharged Faulkenberry, who never had been laid off before, he retained at least 10 other weavers with less seniority than Faulkenberry and whose production, in at least one instance, was, according to Justus, only "a little better" than Faulkenberry's.

The Trial Examiner credited Justus' testimony that he was not aware of the increase in Faulkenberry's production during her last week until after her discharge. However, the Trial Examiner overlooked the fact that after her discharge Faulkenberry had been to the personnel office asking for work. During this time the Respondent's force of weavers was further decreased to 57 and then increased to 60. The increase of three was made by hiring one weaver, Revis, from the outside, by assigning a trainee, Wright, to a weaving job, and by hiring back Otis Varnadore, who had less seniority than Faulkenberry and who had previously quit. Faulkenberry was not offered reemployment despite the fact that Justus must have known by then of the material increase in her production during the last week she worked.

In sum, the record shows that: (1) Faulkenberry's testimony at the first hearing was damaging to the Respondent's case and contradicted that of her supervisors who were later responsible for her discharge; (2) until the summer of 1964 Faulkenberry had a good work record with the Respondent, and had been complimented by her supervisors; (3) Faulkenberry had seniority over many other weavers; (4) after the first hearing she was watched

more closely by her supervisors; (5) prior to her discharge Faulkenberry's request to be transferred to another and easier set of looms was denied, whereas the request of Peterson was granted; (6) at the time of her discharge the Respondent was aware that the special circumstances of a learner fixer, a difficult style, and a weaver on the preceding shift who left Faulkenberry's looms in "a mess", adversely affected her production; (7) the Respondent made no attempt to determine whether Faulkenberry had seniority over Reufelt for the harness cleaning job or to place Faulkenberry in other nonweaving work; and (8) the Respondent did not offer Faulkenberry reemployment when it later increased the number of weavers, although it knew of the material increase in her production during her last week and of her desire to work, but instead hired weavers with less seniority and experience than Faulkenberry. In these circumstances we find that the Respondent's assigned reasons for Faulkenberry's discharge were pretexts and that the real reason was that she had given testimony under the Act unfavorable to the Respondent. Accordingly, we find that by discharging Juanita Faulkenberry, the Respondent violated Section 8(a)(4) of the Act.

William E. Coker

Coker was employed as a weaver on the second shift at the Respondent's Estes plant at the time of his discharge on May 25, 1965. The plant superintendent was V. T. Jenkins, the general overseer of weaving was J. C. Blackston, and the assistant overseer of weaving, Coker's immediate supervisor, was Shannon McCall.

In the 13 years prior to his discharge Coker had received 12 personnel action reports. Three of these were for work of poor quality. Eight specifically mentioned Coker's poor inspecting. Thus, on May 21, 1956, long before he became active in the present union campaign, Coker was written up because he "ran a wrong draw on loom No. 437 [of] 36 yds. With closer inspecting this would have been caught. Mr. Coker must inspect closer." Coker received similar personnel action reports on September 20, 1956, and June 11, 1958. On May 23, 1961, before his union affiliation and activity became known to the Respondent, Coker received a writeup because he, "ran loom No. 274 with thread out (77 yards). With proper inspection this thread out would have been caught." Thereafter, as more fully set forth in the Trial Examiner's Decision, during the summer and fall of 1964, Coker's name was listed on Union leaflets as a member of the Union organizing committee, and a prounion letter he had written to the *Saluda Valley Record*, that was rejected by the newspaper, was printed in a leaflet distributed by the Union in October 1964.[10]

In March 1965, after noting the high percentage of seconds woven at the Estes plant, Jenkins spoke to Blackston about better inspecting. Weavers had been informed prior to this time, and were thereafter again told, of the specific steps the Respondent requires for inspecting cloth. Soon after a weaver comes on a shift he is required

[10]Coker was also a Union observer at a NLRB representation election among the Respondent's employees at the Estes plant on May 13, 1965.

thoroughly to inspect each of his looms by using a light to examine the cloth for defects. A weaver must: (1) stop the loom; (2) bend over and inspect the face of the cloth; (3) bend over and examine the ends of the roll of cloth and the roll itself; (4) check the cutter; and (5) if there are no defects or if the loom does not need further attention, initial and date the cloth. If, however, the loom is making a defect in the cloth, the weaver must not initial the cloth, but instead must stop or flag the loom, or take other appropriate action.

It is not disputed that Coker knew of this procedure and had followed it at times in the past. Nevertheless, on several occasions prior to March 26, 1965, McCall warned Coker that he was not inspecting properly. Then, on March 26, more than 5 months after the distribution of Coker's letter, McCall gave Coker a writeup for high seconds "due to poor inspection." Again, on March 30, 1965, Coker received a personnel action report, in part, for "not inspecting cloth like he should." Thereafter, Coker improved a little but then, according to McCall's uncontraverted testimony, Coker "dropped back" to a point where he was not stopping each loom as required. Finally, on May 15, 1965, McCall wrote Coker up for poor inspection. At this time, McCall specifically outlined to Coker the steps for inspecting which Coker was supposed to follow. McCall's testimony was that after May 15 Coker "got worse" at inspection.

On May 24, 1965, according to Coker's own testimony, he began inspecting looms at the beginning of his shift, after starting some looms. Coker came to loom no. 46 that

had a new warp tied on. This warp had been running about 4 yards of cloth (less than 1 hour's worth) from the previous shift. Coker looked only at the face of the cloth and did not notice anything wrong; he thereupon initialed it. Coker stated that he did not stop the loom or follow the other steps of the inspection procedure, but that, as the loom had a new warp, he intended to come back to it after he finished inspecting his 61 looms.

While Coker was attending to his other looms, McCall came to loom no. 46 and noticed some torn selvage on the loom. The torn portion of the cloth was going around a separate roll which was causing a "build-up", a situation that could result in extensive damage to the loom. McCall cut off that particular defective part of the cloth and instructed the cloth doffer later to doff the cloth and bring McCall the torn portion. Blackston was shown this torn portion the next day, May 25, 1965. After noting that Coker's initials were on the cloth and that the torn portion was running at the time Coker initialed it, Blackston concluded that it was apparent that Coker had not properly inspected the cloth, but had initialed it anyway. He thereupon asked for, and received, Jenkins' permission to discharge Coker, whereupon Coker was called into Blackston's office and terminated. Coker's termination slip lists the "details" of his discharge as follows: "This employee allowed a loom to run tearing up cloth. He had initialed cloth as if he had inspected but had not. He has got so he will not follow instructions and warnings."

The Trial Examiner found that as "the end purpose of a weaver's checking his cloth is to help minimize the num-

ber of seconds he produces," and as "Coker's seconds were average or fewer than average," he could not attach much importance to Coker's failure to inspect properly. The Respondent contends that it is important for its weavers to follow the prescribed methods of job performance whether or not their particular seconds are high or low. Jenkins testified that if inspection procedures were not followed the Respondent's "whole quality program would go haywire." Jenkins stated what impact the failure of one weaver to follow procedure would have on the other weavers:

> . . . [I]t would certainly have an effect on other weavers, due to the fact that they would say, well, we have so much time allotted for inspection on our job; this fellow is going to spend ten minutes, and I have to spend forty; there's something wrong.

Similarly, Blackston emphasized the need for uniform inspection procedures regardless of whether unorthodox methods of inspection might sometimes result in fewer seconds for a particular individual:

> . . . [I]f one is doing it [inspecting in accordance with the procedures outlined] and the other one is not, then you can see it all over the weave room when a person is not inspecting properly, if you let one go on and on and on that way, before long you've got them all doing the same thing; and that's what happened; McCall complained to me that Mr. Coker was inspecting looms, walking up the alley with a light shining from one to the other, this way, not even stopping the loom off; well,

other weavers could see what he was doing; their jobs connect to his.

We are persuaded, in view of the above, that the Respondent regards as important adherence to its prescribed inspection methods. Further, the record shows that the Respondent's concern for Coker's lax inspection methods predated his union activity, and that Coker continued his unorthodox inspection methods after he joined the Union. In the three months prior to his discharge he received three personnel action reports for poor inspecting. At the time of the last of these reports he was specifically told what he must do to inspect properly. Coker disobeyed instructions, and the result was a torn selvage that could have seriously damaged a loom, which Coker nevertheless initialed as free from defects. In view of the above, we are not persuaded that the Respondent's reason for discharging Coker—that he failed to inspect properly—was a pretext. Accordingly, we shall dismiss the complaint as to Coker.

We also modify the Trial Examiner's Decision in the following respects:[11]

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[11]The Trial Examiner inadvertently failed to make specific findings that the following employees were discharged in violation of Section 8(a)(3) of the Act: Oliver Durham, W. O. Epps, Frank Wojeck, James Hill, Leroy Reeves, Rufus Finley, and Donald Jones. We hereby find that these employees were discharged in violation of Section 8(a)(3) of the Act. We also find that James Rosemond was denied overtime in violation of Section 8(a)(3) of the Act. Although the Trial Examiner's "Conclusions of Law" include a finding that the Respondent discriminated against Ben Suratt, Hubert Varnadore, John Fulbright, and Willis Young for giving testimony under the Act, the Trial Examiner failed to so find in discussing the individual case of each of these employees. We correct this oversight and hereby find that the above four employees were discharged in violation of Section 8(a)(4) of the Act.

With respect to the employment history of Ben Suratt, the Trial Examiner did not mention two personnel action reports received by Suratt. One, on February 3, 1964, was for inefficiency, and the other, on June 25, 1964, was for smoking outside the mill.[12] The Trial Examiner also stated that Suratt, Hyatt, and Hubert Varnadore began wearing Union buttons and T-shirts at work, and that "Carter sent them home to take the insignia off." While all three employees wore the insignia apparently on a number of occasions, the record shows that Carter told only Varnadore to go home and take the T-shirt off. Neither Suratt nor Hyatt was wearing a Union T-shirt when Carter spoke to Varnadore. These modifications, however, do not affect our judgment that Suratt was discharged for his union activity. Thus, it is still true, as the Trial Examiner found, that Suratt never received a personnel action report until his name had been posted as a Union member and that his discharge directly followed a resumption of his union activity, evidenced by his wearing of union insignia.

On page 10 of his Decision, lines 55-56, in discussing the discharge of John Fulbright, the Trial Examiner states that, "there is no evidence that Fulbright [distributed leaflets in the plant] . . . except during breaks and in the washroom". The testimony of employee Hiot was that he told Supervisor Scruggs that Fulbright had asked Hiot to pass leaflets "out over job", but that Hiot did not do so.

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[12]The Trial Examiner did note that Suratt received a personnel action report on July 22, 1964, but incorrectly stated that this report was issued by Brannon. The report was actually written and signed by Carter.

Employee O'Bryant testified that he saw Fulbright put leaflets in rolls of cloth, in the shuttle boards, and on work benches, but that when Scruggs asked O'Bryant who had been distributing the leaflets O'Bryant replied that he did not know. We correct these omissions by the Trial Examiner, but find that they do not have a significant impact on the Trial Examiner's findings that the Respondent's 12-day investigation to determine where the leaflets originated was "barren of result". The only information received by the Respondent came from Godfrey and Hiot, neither of whom had actually distributed any leaflets, and whose statements to the Respondent hardly establish that Fulbright actually distributed leaflets during working hours. We note, furthermore, that although Scruggs purported to conduct an "investigation" as to the origin of the leaflets, he failed to question the alleged culprit, Fulbright, although Fulbright was an employee of 13 years service to the Respondent, and even refused specifically to state to Fulbright at the time of his discharge that he was responsible for distributing the leaflets. Finally, we find it significant that it was not uncommon for leaflets to be left around the plant, but that the record does not show that the Respondent had ever before conducted an "investigation" as to the origin of such leaflets and, indeed, had apparently tolerated the presence of union literature in the plant. On all the evidence, we agree with the Trial Examiner that Fulbright, who was dismissed less than a month after he gave testimony on behalf of the General Counsel at the hearing in *J. P. Stevens I* was discharged in violation of Section 8(a)(3) and (4) of the Act.

In discussing the discharges of Willard Page and Junior Hulsey, the Trial Examiner stated that Cothran "saw Page and Hulsey leave the washroom about 10 minutes before midnight and get on the freight elevator, but that he did not know where they went." The Respondent contends that the record shows that Cothran told Hawkins that he had "seen them [Page and Hulsey] leave". On cross examination, however, Cothran clarified this last statement.

A. . . . he [Hawkins] asked me had I seen them; that is, he didn't ask me where they were.

Q. What'd you say?

A. I told him, yeah, I'd seen them leave.

Q. Leave where?

A. Leaving the picker room.

Q. You don't know where they went when they left the picker room, do you?

A. Well, it is not up to me to find out where they went.

Trial Examiner: Your answer is no, is that it?

The Witness: Yes, sir.

Thus, the record confirms the Trial Examiner's findings concerning Cothran's testimony, which we find to be vague and of little value.

But even if the foregoing testimony may be read as suggesting that Page and Hulsey may have left the plant 10 minutes early, the record also shows that others in Page's and Hulsey's crew had, on occasion, left early with-

out being reprimanded or discharged; indeed, it affirmatively appears that Hawkins had instructed the crew in the past to "ease out" 2 or 3 at a time starting at 11:20, 40 minutes before the end of the shift. In view of the above, we agree with the Trial Examiner that the reason offered for the discharges of Page and Hulsey was a pretext and that the real reason was their union activity.[18]

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[18]In ordering that Page be reinstated, the Trial Examiner did not discuss an incident that occurred in the picker room office at the time of Page's discharge. According to Page, on the day of the discharge Hawkins called Page into the office where Hawkins questioned him as to where he had been at 11:50 the previous night. Page replied that he was on the job whereupon Hawkins said he had checked and Page was not there. Then Page said, "you're lying, you wasn't even out there. . . ." Later, after Page and Hulsey were told they were being discharged for leaving early, Page "flew mad" and "cussed him [Hawkins] out with everything . . . [he] could think of", including calling Hawkins "a son of a bitch and a bastard". Hawkins' testimony was that Page first called him "a damned liar", or claimed that Hawkins "was telling a damned lie", and later called him a "son of a bitch", and told Hawkins that he "was going to smash [his] head in or break [his] legs".

While we do not condone this kind of employee misconduct, considering all the circumstances of these cases, and particularly the Respondent's numerous and flagrant unfair labor practices, we do not on balance find it sufficiently serious to warrant denial of reinstatement and backpay. Thus, there is no evidence that prior to, or after, the incident in the office Page made intemperate remarks or engaged in physical violence. Just prior to the incident in question Hawkins had accused Page of not being on the job (the Trial Examiner found to the contrary) and had announced Page's discharge, which was discriminatorily motivated. With good justification, therefore, Page believed he had been treated unfairly. The Fourth Circuit Court of Appeals recently held in similar circumstances that:

> An employer cannot provoke an employee to the point where she commits such an indiscretion as is shown here and then rely on this to terminate her employment. . . . The more extreme an

In finding that the discharge of Jake Owens was discriminatorily motivated, the Trial Examiner overlooked a final incident preceding the discharge. On May 5, one day before Owens' discharge, he was instructed by Thomas to clean up a warehouse platform by picking up paper in the yard around the platform, emptying the trash cans, and putting certain tie bands in a scrap bin. When Thomas checked to see if Owens had done the job, he found that Owens' crew had picked up paper around the platform but had not yet cleaned off the platform itself. It was then that Thomas decided to terminate Owens. This last incident appears to be trivial, however, when considered in the context of Owens' job history. Owens had worked for the Respondent for 17 years, during most of which time his work performance, the record shows, was good. For about 2½ years preceding his discharge, Owens had been a leadman directing a crew of about five employees. According to Thomas, beginning in January 1965 Thomas spoke to Owens on at least three occasions about specific jobs Owens' crew had been directed to do but which had not been accomplished quickly enough. On none of these occasions, however, was Owens issued a personnel action report, which indicates that the Respondent did not con-

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employer's wrongful provocation the greater would be the employee's justified sense of indignation and the more likely its excessive expression. . . . [R]efusal to reinstate her would put a premium on the employer's misconduct.

N.L.R.B. v. *M & B Headwear Co.*, 349 F. 2d 170 (C.A. 4); Cf. *Local 833, UAW* v. *N.L.R.B. (Kohler Co.)*, 300 F. 2d 699 (C.A.D.C.). Accordingly, we agree with the Trial Examiner that Willard Page should be reinstated with backpay. *J. P. Stevens and Co., Inc.*, 157 NLRB No. 90, footnote 10.

sider these very important. Then, on May 3, Corbett interrogated Owens about Owens' attendance at a Union meeting held the previous day, an interrogation which we have found violated Section 8(a)(1) of the Act. On May 5 Thomas observed Owens' slowness in finishing the above-described platform cleaning job. Although Owens had completed a part of this work assignment, Thomas, on May 6, summarily decided to discharge Owens. Thus, Owens' discharge came only 4 days after his appearance and speech at a Union meeting. Under all the circumstances, we do not believe that the Respondent considered the platform cleaning incident any more serious than those matters Thomas previously had discussed with Owens. Further, we find it significant that Owens had done good work for the Respondent for almost 17 years and that the Respondent was willing to tolerate Owens' shortcomings for a period of 4 months preceding his discharge, but not after he was seen at the Union meeting. Accordingly, we agree with the Trial Examiner that the assigned reason for Owens' discharge was a pretext and that the real reason was his union activity.

The Trial Examiner found that the complaints about Frank Wojeck received by Dempsey were "vague and undefined" and that "Dempsey had no personal knowledge" of Wojeck's solicitation on working time. The record shows, however, that one of Dempsey's own employees, John Bowles, complained to Dempsey that Wojeck solicited Bowles while Bowles was welding. We correct this oversight by the Trial Examiner, but note that it does not detract from the Trial Examiner's findings that: (1)

Wojeck had worked for the Respondent for 11 years; (2) the Respondent had never complained about his work performance; and (3) Dempsey had not attempted to obtain Wojeck's side of the story or even to advise Wojeck as to the specific nature of the complaints against him. Further, the record shows that the Respondent had in the past permitted solicitations on company time. Thus, Lions Club members, including Dempsey, sold brooms throughout the plant on working time, a tool salesman set up a display inside the plant and sold the employees tools during their working hours, and money was solicited for Boy Scout cookies, needles for the band-raising fund, and chocolate bars for children graduating from school, all without objection by the Respondent. Accordingly, we agree that the assigned reason for Wojeck's discharge—that he interfered with the work of other employees—was a pretext, and that the real reason was his union activity.

On Page 31, lines 21-27, the Trial Examiner related a conversation involving James Hill and supervisor Trotter. According to the Trial Examiner, Hill was asked by Trotter if he was a union man, and Hill replied that he was, whereupon Trotter is quoted by the Trial Examiner as saying, "You know you'll get fired for that." The record shows, however, that the query as to Hill's union affiliation and the statement about being fired were actually made by a nonsupervisory employee, Eskew, although in the presence of Trotter. We correct this error but note that it does not detract from the Trial Examiner's findings, with which we agree, that the Respondent mounted a campaign to get rid of Hill as soon as his name appeared

on a Union leaflet, and finally discharged Hill on unsupportable grounds. Accordingly, we agree with the Trial Examiner that Hill was discharged in violation of Section 8(a)(3) of the Act.

The complaint herein alleged that from November 22, 1963, and continuing until September 14, 1964, the Respondent reduced the hours of work of James Hill, in violation of Section 8(a)(3) of the Act. The Trial Examiner did not discuss this aspect of the case or make findings thereon. The General Counsel's exceptions contend that for the period in question Hill was given 1 hour less overtime per week than all other employees in his department, and was additionally deprived of work on double shifts which he had done prior to November 22, 1963.

The record shows that in about September 1963, shortly after Hill joined the Union and distributed a Union leaflet with his name on it, Hill's department went on a 6-day, 48-hour week, a change from the normal 5-day, 40-hour week. The 6-day week continued until the time Hill was discharged on September 14, 1964.

About the middle of October 1963, the above-described conversation between Hill, Eskew, and Trotter took place, during which Hill admitted that he was a Union member. Hill testified that the week after this conversation he began to lose overtime. Data submitted by the Respondent corroborate Hill's claim. Thus, in the period November 18, 1963, to September 14, 1964, Hill worked 310.5 hours of overtime, which amounts to an average of 7 hours per week during that 44-week period. In contrast, all other

regular employees in Hill's department averaged 8 hours overtime per week. The Respondent offered no explanation for this discrepancy.

Hill also testified that prior to his conversation with Eskew and Trotter, the Respondent had frequently designated Hill and Dockery, another employee, to work a double shift.[14] That is, these two employees would stay on after the conclusion of the second shift, on which they regularly worked, and would work the third shift from midnight until between 7 a.m. and 8 a.m. for which they received time-and-a-half pay.

After Hill told Trotter in mid-October 1963 that he was a Union member, Hill received no double shift work, although Dockery continued to get this assignment. On one occasion, according to Hill, Dockery complained to Hill that the Respondent "was working him [Dockery] too much" and asked Hill if he would work the overtime that night in Dockery's place. Hill agreed and suggested that Dockery speak to Johnson, their second hand. Nevertheless, on this occasion Hill was not assigned the double shift. Hill also stated that he had directly requested his supervisors to assign him overtime work, but to no avail. In these circumstances, we find that Hill was denied overtime work because of his union affiliation and activity, in violation of Section 8(a)(3) of the Act, and shall order

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[14]This is substantiated by a document submitted by the Respondent which shows that for the period from January 20, 1963, through November 17, 1963, during almost all of which the Respondent was on a 5-day week, Hill earned an average of 6.3 hours of overtime per week.

that he be made whole for any loss of earnings suffered as a result of the discrimination against him.

In discussing the discharge of Willis Young, the Trial Examiner did not mention that Young had given testimony under the Act, although in his "Conclusions of Law" he lists Young's discharge as a violation of Section 8(a)(4). We note that Young testified as a witness for the General Counsel at the first hearing on June 24, 1964, and, accordingly, make this addition to the Trial Examiner's findings. We agree with the Trial Examiner that Young was discharged in violation of Section 8(a)(3) and (4) of the Act.

The Trial Examiner attributed to Willie Pulley, who directed the work of John Little and Leslie Hancock, certain damaging admissions and threats. The Respondent contends that Willie Pulley is not a supervisor. The record shows, however, that Pulley is the only person directing the work of the 8-10 employees in the cloth room for most of his shift and that Pulley gives employees time off for illness. Accordingly; we find Willie Pulley to be a supervisor within the meaning of Section 2(11) of the Act.

The Remedy

In *J. P. Stevens I,* decided last year, we found that "the conventional reinstatement, backpay, and posting of notice requirements for 8(a)(3) and (1) violations are not completely adequate to undo the effect of the massive and deliberate unfair labor practices committed by Respondent in its successful efforts to frustrate organization by its employees." Accordingly, we ordered the Respondent, in ad-

dition to our usual remedies, to: (1) convene during working time meetings of employees in the various departments of its North and South Carolina plants and read to them a copy of the Notice to All Employees; (2) mail copies of the notice, after it has been signed by the Respondent's representative, to each of its employees in its plants in the States of North and South Carolina; and (3) give to the Union and its representatives, upon request, reasonable access to its bulletin boards and other places where notices to employees are customarily posted for a period of 1 year beginning with the issuance date of that Decision.

The Charging Party has requested that, in addition to the above three remedies, we also require the Respondent to furnish the Union with a list of names and addresses of its employees. We have decided to give all four remedies and now proceed to explicate more fully our reasons therefor.

The Trial Examiner here observed that:

> The record of the 1965 hearing [the instant case] reflects the continued, systematic determination of this employer as revealed by the record of the 1964 hearing [*J. P. Stevens I*], to destroy the union root and branch by discharging its most active members on any pretext which might come to hand, or could be invented, by threatening to discharge others unless they came to management and renounced the Union, and by provoking the resignation of still others from Respondent's employment. No other conclusion can be drawn than that Respondent has largely succeeded in its purpose.

The total of unfair labor practices committed by the Respondent in this case and in *J. P. Stevens I,* involving more than 20 of the Respondent's plants, supports the Trial Examiner's observation. In these cases the Respondent unlawfully discharged a total of 88 employees for their union activity and discriminated against 4 employees because of their Union affiliation by not assigning overtime to them, in violation of Section 8(a)(3) of the Act. In addition, the Respondent violated Section 8(a)(4) of the Act by discharging seven employees for participating in National Labor Relations Board proceedings. The Respondent also otherwise interefered with, coerced, and restrained its employees in the exercise of their right to self-organization and to engage in concerted activities, a right guaranteed by Section 7 of the Act. It did so in these two cases by making at least 30 threats of reprisal and promises of benefit to employees, by engaging in four acts of surveillance and in two instances creating the impression of surveillance of union activities, by demanding on two occasions that employees remove union insignia, by posting threatening notices on its bulletin boards, and by discriminating against uinon adherents in the application of a no-solicitation rule.[15] The record before us of exten-

[15]Our records of past cases involving this Respondent show that the above cases do not represent isolated instances where the Respondent violated the Act, but are rather two more in a series of cases which reflect the Respondent's general policy of chilling unionism by committing unfair labor practices or engaging in objectionable conduct. Thus, in *Industrial Cotton Mills (Division of J. P. Stevens Co.),* 102 NLRB 1265, the Board, in 1953, found that the Respondent had violated Section 8(a)(3) and (1) of the Act when it denied reinstatement to two strikers who were union

sive unfair labor practices and the history of illegal conduct by the Respondent persuade us that conventional remedies would not be adequate to disabuse the employees of the effects of the Respondent's flagrant conduct and to bring home to the Respondent's employees the message that the Respondent is being required to cease and desist from interfering with their rights guaranteed by Section 7

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members. This decision was affirmed, in part, by the Fourth Circuit Court of Appeals in *NLRB* v. *Industrial Cotton Mills (Division of J. P. Stevens Co.)*, 208 F. 2d 87 (C.A. 4). In 1955, in *Delta Finishing Company (Division of J. P. Stevens & Co., Inc.—Plant No. 3)*, 111 NLRB 659, the Board held that the Respondent had violated Section 8(a)(1) of the Act by interrogating and threatening employees about their union activity and by promulgating an illegal no-solicitation rule. The Respondent was found by the Board to have violated Section 8(a)(3) and (1) of the Act again in 1959 in *J. P. Stevens & Co., Inc.*, 125 NLRB 1354, when its supervisors discharged employees for their union activity, and made threats of firing and plant closings, and predictions of violence in the event of unionization.

During the period of time covered by the instant case, representation elections were held at various plants of the Respondent, where the Respondent continued its course of illegal conduct. In *J. P. Stevens & Co., Inc. (Dunean Plant)*, Case No. 11-RC-2136 (not published in NLRB volumes), an election which the Union lost was set aside because the Respondent's supervisors had unlawfully interrogated and threatened employees, had ordered an employee to write "Vote No" on about 20-25 cards and distribute them to employees on working time, and had permitted antiunion employees to distribute literature on working time while publishing a no-solicitation rule prohibiting similar union employee solicitation. A representation election at 6 of the Respondent's plants in *J. P. Stevens & Co., Inc.*, 11-RC-2095 (not published in NLRB volumes), was also set aside because prior to the election the Respondent had made thinly veiled threats to employees of plant closing and discharge in the event of unionization.

of the Act, to join or not to join a union. Remedies other than the conventional ones are clearly called for here.

We note that the Supreme Court has recognized that Congress conferred upon the Board broad discretion to create remedies to meet specific situations where the normal modes of relief will not suffice to right the outstanding wrong. In the leading case of *Phelps Dodge Corporation* v. *N.L.R.B.*, 313 US 177, 194, Mr. Justice Frankfurter indicated the Court's view of the Board's powers in this area:

> . . . [I]n the nature of things Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act. Nor could it define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations. Congress met these difficulties by leaving the adaptation of means to end to the empiric process of administration. The exercise of the process was committed to the Board, subject to limited judicial review.[16]

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[16]See, also, *May Department Stores* v. *N.L.R.B.*, 326 U.S. 376, 391-92, where the Court recognized that "the Board has the same power to determine the needed scope of cease and desist orders under the National Labor Relations Act that courts have, when authorized to issue injunctions, in other litigation." Accord: *N.L.R.B.* v. *Seven-Up Bottling Co.*, 344 U.S. 344; *IAM Tool and Die Makers Lodge No. 35* v. *N.L.R.B.*, 311 U.S. 72; *N.L.R.B.* v. *Globe Products Corp.*, 322 F. 2d 1459 (C.A. 4); *Standard Generator Service Company of Missouri, Inc.* v. *N.L.R.B.*, 186 F. 2d 606 (C.A. 8); *N.L.R.B.* v. *Idaho Egg Producers, Inc.*, 229 F. 2d 821 (C.A. 9); *Eichleay Corp.* v. *N.L.R.B.*, 206 F. 2d 799 (C.A. 3). And, see House Rep. No. 969 on H.R. 7978 (74th Cong., 1st Sess.) p. 21, 2 Legis. Hist. of the National Labor Relations Act of 1935 (Govt. Prtg. Off.) 2931. See, also, House Rep. No. 1147 on S. 1958 (74th Cong., 1st Sess.) pp. 23-24, 2 Legis. Hist. of the National Labor Relations Act of 1935 (Govt. Prtg. Off.) 3074.

Mindful of the proscription against remedies which may unduly penalize a respondent[17] as well as of the necessity of being imaginative and meticulous in fashioning our orders,[18] we have herein prescribed only such remedies as are warranted by the record before us. This record and that of earlier cases is replete with examples of unlawful attempts by the Respondent's supervisors to wean individual employees away from the Union or to prevent them from joining it. These illegal attempts involved interrogations, promises, and threats that were most often followed by unlawful discharges of Union members, carried out by these same supervisors, which reached massive proportions.

This individual, face-to-face approach by the Respondent's supervisors towards its employees we find to have a greater psychological impact upon the employees than similar remarks made by an employer in a letter to all employees or in a speech to a large assembly of workers.[19] We find, therefore, that the posting of a notice, which is our usual remedy, is insufficient to dissipate the effects of the Respondent's unfair labor practices. In this case it is

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[17]Cf. *Virginia Electric and Power Company* v. *N.L.R.B.*, 319 U.S. 533.

[18]See, Flannery, Dennis M., "The Need for Creative Orders Under Section 10(c) of the National Labor Relations Act," 112 U. Pa. L. Rev. 69, 79 (1963). See, also, Note, 59 Harv. L. Rev. 747, 765.

[19]Baker, Ballantine, & True, *Transmitting Information Through Management and Union Channels* (1949) p. 125; Peters, R. W., *Communication Within Industry* (1950) p. 178; Note, 61 Yale L. J. 1066, 1074-1076, footnotes 33-39 (1952).

essential that each employee be made individually aware of his statutory rights.[20] Accordingly, we have ordered the Respondent's supervisors, many of whom were directly implicated in the unfair labor practices described above, to read the attached "Notice To All Employees" to the employees in their departments, thereby directly placing the imprimatur of recognizable supervisory authority on the notice. We have also ordered that the Respondent mail copies of the "Notice To All Employees" to its employees to ensure that employees who are sick, on vacation, or otherwise absent when the notice is read will have an opportunity to be adequately informed of the Respondent's intention to refrain from engaging in unfair labor practices. The mailing of the notice to everyone will also permit those who heard the lengthy notice read in the plant to peruse it at their leisure and fully absorb it.[21]

The record also shows that the Respondent carried on a long campaign of illegal intimidation and unlawful discharge of those employees who were actively soliciting for the Union. The Respondent's efforts to eliminate those Union members who might recruit others to the Union banner were, as the Trial Examiner herein indicated, largely successful: in some departments where there once had been a number of Union supporters, not one was left. They had been discharged, or withdrew from the Union

[20]The Supreme Court early recognized that, "the employer may be required . . . to give appropriate notice of his compliance with the Board's order. . . ." *Republic Steel Corp.* v. *N.L.R.B.*, 311 U.S. 7, 12.

[21]*H. W. Elson Bottling Company*, 155 NLRB 714.

because of fear of reprisals. Meanwhile, antiunion employees were free to talk about the Union during working hours.

In these circumstances, we believe that a simple cease and desist order will not suffice, for it would be unrealistic to believe that such an order could retrieve the employees' thwarted rights of self-organization or restore the Union to its previous position where it was able to make known its views and solicit memberships with the help of employee members within the plant. Few, if any, Union supporters are left, and those who might espouse the Union cause, such as reinstated employees who previously had been discharged for their union activity, would probably be afraid to promote the Union for fear that they would be discharged again. The atmosphere of fear generated by the illegal threats, interrogations, and discharges in the plant undoubtedly will hinder lawful propaganda activities during nonworking time on company premises. We note, furthermore, that union organizers ordinarily have no right of access to the plant[22] and that, so far as the record shows, this Union now has no other effective means of personally contacting all of the Respondent's employees. Accordingly, we have decided to grant the Charging Party's request that the Respondent be required to supply the Union, upon request made within 1 year, with the names and addresses of all employees in its North and South Carolina plants. This will enable the Union to contact all employees outside the plant and make known its views in an atmosphere relatively free of restraint and

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[22] *N.L.R.B.* v. *Babcock & Wilcox,* 351 U.S. 105.

coercion. As the Respondent was responsible for the unfair labor practices in the plants and for the attendant lack of organizational opportunities, and as all the employees' names and addresses are not available from sources other than the Respondent, we think it reasonable to require it to furnish the list.[23]

In *J. P. Stevens I*, we found that the Respondent had violated Section 8(a)(1) of the Act by posting on its bulletin boards a notice which informed employees that if "the union were to get in here it would not work to your benefit but, in the long run would itself operate to your serious harm." These bulletin boards were also used to post lists of employees who, the Respondent had been informed, had joined the Union. Some of these employees told the Respondent they desired to leave the Union, whereupon their names were "scratched" from the list on the bulletin boards. This, the Trial Examiner found, revealed "to all how the fortunes of the Union ebbed and flowed." In view of this extensive use by the Respondent

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[23]See, *H. W. Elson Bottling Company, supra; S & H Grossinger's Inc.*, 156 NLRB 233, enfd. in relevant part F. 2d (C.A. 2, Feb. 1, 1967); *Scott's, Inc.*, 159 NLRB No. 146; *James A. Pearson, Rufus S. Pearson and Mrs. E. W. Pearson d/b/a Crystal Lake Broom Works*, 159 NLRB No. 30. This requirement of a list of names and addresses supplied by the employer and furnished to the union is now standard procedure in those cases where an NLRB representation election has been scheduled. Cf. *Excelsior Underwear Inc. and Saluda Knitting Inc.*, 156 NLRB 1236. Preliminary studies by the Board in the representation case area have shown that the compilation of such a list does not place an undue burden upon an employer, that in almost all cases employers have readily supplied the list, and that this procedure has generally worked to the satisfaction of the parties.

of its bulletin boards, and particularly in consideration of the Respondent's flagrant unfair labor practices which denied and deprived its employees of their rights under the Act, we are also requiring the Respondent to give the Union and its representatives reasonable access to the Respondent's bulletin boards for a period of 1 year.

Because of the widespread and flagrant nature of the Respondent's unfair labor practices, which have occurred in the more than 20 plants involved in the present and prior proceedings (see footnote 15, above), we believe it necessary to make the above remedies applicable to all the Respondent's plants in North and South Carolina. This requirement will help insure that all the Respondent's employees will be informed of the Respondent's intention to refrain from coercing them in the exercise of their protected rights.

In its brief, the Charging Party urges that in cases such as this, where, because of the Respondent's massive unfair labor practices, the Union has been prevented from obtaining a majority, the Board should issue an order directing the Company to recognize and bargain with the Union. The Charging Party would make such an order applicable to the Slater Plant and the Roanoke Rapids plants herein. We are not persuaded, however, that such an order is appropriate. Although there is a possibility that, but for the Respondent's unfair labor practices, the Union might ultimately have secured majority status, it has not done so. In view of the majority principle in Section 9(a) of the Act, we have serious doubts that the policies of the Act

require or permit the issuance of a bargaining order where majority status has never been attained.[24]

Conclusions of Law

1. Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By discriminating in regard to the hire or tenure of employment or any term or condition of employment of those employees whose names appear in the Appendix attached hereto, thereby discouraging membership in the above-named Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By discharging employees because they gave testimony under the Act, Respondent violated Section 8(a)(4) of the Act.

5. By engaging in interference, restraint, and coercion, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. Respondent did not violate the Act by discriminating with respect to the hire and tenure of employment of Wylie Hill, Bobby Spoon, Franklin Moore, Joe Manley, Daniel Murray, and William Coker.

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[24] *H. W. Elson Bottling Company, supra; J. P. Stevens and Co., Inc.*, 157 NLRB No. 90.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, J. P. Stevens and Co., Inc., Rock Hill and Greenville, South Carolina, and Roanoke Rapids, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, forcing the termination of, refusing overtime work to, or otherwise discriminating against employees in regard to hire or tenure of employment or any term or condition of employment in order to discourage membership in Textile Workers Union of America, AFL-CIO, or any other labor organization.

(b) Discharging or otherwise discriminating against employees for giving testimony under the Act.

(c) Engaging in surveillance of employees' activity in respect to union organization or giving the impression thereof.[25]

(d) Interrogating any employee concerning such union activity by him or other employees in a manner constituting a violation of Section 8(a)(1) of the Act.

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[25]The Trial Examiner inadvertently left these paragraphs out of his proposed "Notice To All Employees". We have corrected this omission.

(e) Threatening its employees with discharge or other reprisals if they become or remain members of the Union or give any assistance or support to it.

(f) Altering its working conditions for the purpose of defeating the organizational efforts of its employees or of Textile Workers Union of America, AFL-CIO, or the efforts of any other labor organization of its employees.

(g) Encouraging or permitting employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

(h) Intimidating, coercing, encouraging, and assisting employees in withdrawing from the Union.

(i) Instructing employees to watch for and report to the Respondent the union activities of other employees.

(j) Requiring its employees to remove and prohibiting its employees from wearing Union insignia.[26]

(k) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through represenatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and to refrain from any or all such activities.

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[26]See footnote 25, *supra.*

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Offer to the employees, whose names appear in the Appendix attached hereto, reinstatement to their former positions or to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed; and make each such employee whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, in the manner described in "The Remedy" section of the Trial Examiner's Decision.

(b) Offer to James Rosemond and James Hill overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them, and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest at 6 percent per annum.

(c) Notify those employees listed in the Appendix attached hereto, if presently serving in the Armed Forces of the United States, of their right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records neces-

sary to analyze the amounts of backpay due and the rights of employment under the terms of this Order.

(e) Mail a copy of the attached notice marked "Appendix"[27] to each employee, and post copies at all of its plants located in the States of North Carolina and South Carolina. Copies of said notice, to be furnished by the Regional Director for Region 11, shall be signed by a representative of the Company. Thereafter, a copy shall be mailed by the Company to each of its employees working in its North Carolina and South Carolina plants, and additional copies shall be posted by it and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(f) Upon request of the Union, immediately grant the Union and its representatives reasonable access, for a 1-year period beginning with the issuance date of this Decision, to its bulletin boards and all places where notices to employees are customarily posted.

(g) Upon request of the Union, made within 1 year of the issuance date of this Decision, immediately give to the Union a list of the names and addresses of all employees in its plants in North and South Carolina.

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[27]In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order".

(h) Convene during working time, by departments and by shifts, all its employees, and a responsible official of the Respondent, at Departmental Supervisor level or above, shall read to department employees the contents of the attached Appendix.

(i) Notify the Regional Director for Region 11, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

Dated, Washington, D. C., March 6, 1967.

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

Howard Jenkins, Jr., Member

Sam Zagoria, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discharge, force the termination of, refuse overtime work to, or otherwise discriminate against employees in order to discourage membership in or support of the TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against employees for giving testimony under the Act.

WE WILL NOT engage in surveillance of employees' activities with respect to union organization.

WE WILL NOT interrogate any employee concerning such activity by them or other employees.

WE WILL NOT threaten our employees with discharge or other reprisal if they become or remain members of the Union or give any assistance or support to it.

WE WILL NOT alter our working conditions for the purpose of defeating the organizational effort of our employees or of TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or the efforts of any other labor organization of our employees.

WE WILL NOT encourage or permit employees to engage in antiunion activity while prohibiting employees from engaging in activity on behalf of the Union.

WE WILL NOT encourage and assist employees in withdrawing from the Union.

WE WILL NOT instruct employees to watch for and report to the Company the union activities of other employees.

WE WILL NOT prohibit employees from wearing Union insignia.

WE WILL NOT intimidate and coerce employees into withdrawing from the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities.

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions, without loss of seniority or other rights and privileges, and WE WILL MAKE THEM WHOLE for any pay they lost because of the discrimination against them, with interest.

Ben Suratt	Frank Wojeck
Hubert Varnadore	James Hill
John Fulbright	Leroy Reeves
Oliver Durham	Willis Young
Willard Page	Rufus Finley
Junior Hulsey	Donald Jones
W. O. Epps	John Little
Jake Owens	Leslie Hancock
Arthur Dean	Juanita Faulkenberry

We will offer to James Rosemond and James Hill overtime work in accordance with the practice of offering these said employees overtime work prior to the date overtime work was first discriminatorily withheld from each of them, and make them whole for loss of overtime pay during the period of time overtime work was discriminatorily withheld from each of them, with interest.

All our employees are free to become, remain, or refrain from becoming or remaining, members of TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, or any other labor organization.

J. P. STEVENS AND CO., INC.
(Employer)

Dated..... By.....
(Representative) (Title)

NOTE: We will notify the above-listed employees, if presently serving in the Armed Forces of the United States, of their right to full reinstatement,

upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1624 Wachovia Bldg., 301 North Main St., Winston-Salem, North Carolina 27101 (Tel. No. 723-2911, Ext. 371).